

ESTTA Tracking number: **ESTTA662352**

Filing date: **03/20/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Mattoon Rural King Supply, Inc.		
Entity	Corporation	Citizenship	Illinois
Address	4216 DeWitt Avenue Mattoon, IL 61938 UNITED STATES		

Attorney information	Frank B. Janoski Lewis Rice LLC 600 Washington Avenue, Suite 2500 Box IP Department St. Louis, MO 63101 UNITED STATES ipdept@lewisrice.com Phone:314-444-7600
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Registration Subject to Cancellation

Registration No	3765628	Registration date	03/23/2010
Registrant	Weems Industries, Inc. 6281 North Gateway Drive Marion, IA 52302 UNITED STATES		

Goods/Services Subject to Cancellation

Class 017. First Use: 2007/05/01 First Use In Commerce: 2007/05/01 All goods and services in the class are cancelled, namely: Compressed Air Hoses

Grounds for Cancellation

The mark comprises matter that, as a whole, is functional	Trademark Act section 2(e)(5)
Other	Non-distinctive color mark Trademark Act sections 1, 2 and 45

Attachments	MRKS-PetCancellation.pdf(165598 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/fbj/
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Name	Frank B. Janoski
Date	03/20/2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

MATTOON RURAL KING SUPPLY, INC.,

Petitioner,

v.

WEEMS INDUSTRIES, INC. d/b/a
LEGACY MANUFACTURING COMPANY

Respondent.

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) Cancellation No.
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Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

PETITION FOR CANCELLATION OF REGISTRATION NO. 3,765,628

COMES NOW Petitioner Mattoon Rural King Supply, Inc., pursuant to 15 U.S.C. § 1064 *et seq.*, and hereby petitions to cancel Registration No. 3,765,628 issued to Weems Industries, Inc. d/b/a Legacy Manufacturing Company for the color Pantone 389C as used in connection with the body of air hoses.

As grounds for the Petition, it is alleged that:

1. Petitioner Mattoon Rural King Supply, Inc. ("Petitioner") is an Illinois corporation, with its principal place of business at 4216 DeWitt Avenue, Mattoon, IL 61938.
2. Petitioner currently and for many years has operated retail stores offering a wide range of products to its customers.
3. Among its products, Petitioner sells and markets its Tool Shed line of air hoses. The body of the Tool Shed air hose is bright yellow.

4. Petitioner has invested a great deal of time and money in promoting Petitioner's business and the quality of its goods and is continuing to spend substantial amounts of time and money in the promotion of the same.

5. On or about January 16, 2015, Petitioner received a cease and desist letter from Weems Industries, Inc. d/b/a Legacy Manufacturing Company ("Respondent"), in which Respondent asserted that Petitioner's use of bright yellow in its Tool Shed line of air hoses infringed upon Respondent's registration on the Supplemental Register for the use of bright green on its air hoses (the "Purported Mark").

6. Respondent's Purported Mark consists of the color chartreuse (pantone 389C) as applied to the entire hose body of its air hoses.

7. Respondent applied for and was refused registration on the Principal Register because, *inter alia*, the Purported Mark was found (and remains) non-distinctive.

8. On information and belief, Respondent's Purported Mark lacks acquired distinctiveness.

9. On information and belief, the Purported Mark is highly functional.

10. Petitioner believes and alleges that continued existence of Registration No. 3,765,628 on the Supplemental Register will be a continued source of damage and injury to Petitioner in that Respondent will attempt to prevent Petitioner from using its bright yellow color in connection with its Tool Shed line of air hoses based upon Registration No. 3,765,628.

WHEREFORE, Petitioner Mattoon Rural King Supply, Inc. believes that it is being and will continue to be damaged by the continued existence of Registration No. 3,765,628, and prays that said Registration No. 3,765,628 be cancelled and that this Petition for Cancellation be sustained in favor of Petitioner.

Please recognize as attorneys for Petitioner in the proceeding Frank B. Janoski, Michael J. Hickey, Kirk A. Damman, Bridget L. Hoy, Benjamin J. Siders, and Eric D. Block (members of the Bar of the State of Missouri) and the firm of Lewis Rice LLC, Box IP Department, 600 Washington Avenue, Suite 2500, St. Louis, Missouri 63101.

Please address all correspondence and telephonic communication concerning this Petition for Cancellation to:

Frank B. Janoski, Esq.
Eric D. Block, Esq.
Lewis Rice LLC
Box IP Department
600 Washington Avenue, Suite 2500
St. Louis, Missouri 63101

Dated: March 20, 2015

Respectfully submitted,

LEWIS RICE LLC

By: 

Frank B. Janoski
Eric D. Block
Box IP Department
600 Washington Avenue, Suite 2500
St. Louis, Missouri 63101
(314) 444-7600

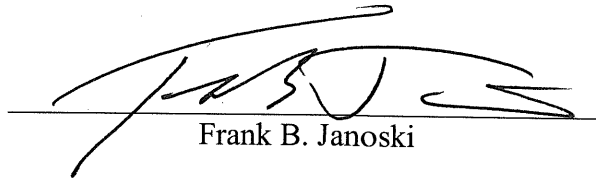
*Attorneys for the Petitioner Mattoon Rural
King Supply, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that, on March 20, 2015, I caused a true copy of the foregoing PETITION FOR CANCELLATION to be sent via First Class Mail, postage prepaid, to:

Brian Laurenzo
Brick Gentry P.C.
6701 Westown Parkway, Suite 100
West Des Moines, IOWA 50266

Attorneys for Weems Industries, Inc.


Frank B. Janoski